IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.469 OF 2007

Ijaz Hussain Ibrahim Modak ...Petitioner
V/s.
The State of Maharashtra & Anr. ...Respondents

Smt.Shakuntala A. Mudbidri for Petitioner.
Ms.Chandana Salgaonkar-Radia for Respondent No.2.
Mr.Y.M. Nakhawa APP for the State.

CORAM : V.M. KANADE, J.
DATED : 1st NOVEMBER, 2007.

P.C:-

1. Heard learned counsel for the Petitioner and learned counsel for the Respondents.

2. Petitioner is challenging the order of issuance of process issued by the JMFC, Pune for the offences punishable U/s.406, 418, 420 of IPC and Section 3(f) r/w 13 of Maharashtra Ownership of Flats Act.

3. Brief facts in a nutshell are as under:-

The Respondent No.2 was a joint owner of a small plot of land bearing S.No.87 situated at Somwar Peth, Pune. The Respondent No.2 alongwith other co- owners entered into a development agreement with the Petitioner. Under the terms of the agreement, the Petitioner was permitted to

put up a building on the said plot and in lieu thereof, he had agreed to give the Respondent No.2 and his brother a flat admeasuring 500 sq. ft. in the new building alongwith Rs.30,000/- each to the co-owners. It is alleged that brother of Respondent No.2 died without leaving any heirs and thereafter the Respondent No.2 approached the Petitioner and asked him to allot the commercial structure on the ground floor admeasuring 330 sq. ft. instead of giving flat of 500 sq. ft. It is the Petitioner's case that accordingly the said structure was handed over to the Respondent No.2. Thereafter, a complaint was filed by the Respondent No.2 alleging cheating and violation of Section 3 (f) and 13 of MOFA.

4. It is submitted by the counsel for the Petitioner that the Respondent No.2 was given the flat on the ground floor as per his request. This is denied by the counsel appearing on behalf of the Respondent No.2. It is submitted that Petitioner is willing to give a flat on the fourth floor of the said building after purchasing the same at market value. Notice was issued in this case only in order to give an opportunity to the parties to explore possibility of settlement. Thereafter, however, matter is pending since August, 2007 and it appears that settlement between the parties is not possible.

5. Under these circumstances, in my view, it is not possible to accept the submissions made by the learned counsel for the Petitioner and at the stage of issuance of process Magistrate has to consider whether averments made in the complaint, if they are accepted at its face value, constitute an offence as alleged by the Complainant. In my view, facts as averred in the complaint disclose ingredients of the offences punishable U/s.406, 418, 420 of IPC and Section 3(f) r/w 13 of Maharashtra Ownership of Flats Act. It is always open for the Petitioner to make an application for discharge at the appropriate stage. It is not possible, therefore, to interfere with the order of issuance of process at this stage. Writ Petition is accordingly dismissed.

6. At this stage, learned counsel for the Petitioner seeks continuation of ad-interim relief which was granted on 27th August, 2007. Request is declined. The Trial Court is directed to decide the case as expeditiously as possible and in any case, within a period of six months.

. Writ Petition is disposed of accordingly.

V.M. KANADE, J.